

# STATE OF CALIFORNIA

## Energy Resources Conservation and Development Commission

<b>In the Matter of:</b>	)	<b>Docket No. 99-SIT-1</b>
	)	
<b>Pastoria Power Project, LLC</b>	)	<b>COMMITTEE PROPOSED DECISION</b>
<b>[Tejon Ranch Company and</b>	)	<b>RE: NOI EXEMPTION</b>
<b>Tejon Ranchcorp]</b>	)	
<b>Petition for Jurisdictional Determination</b>	)	
_____	)	

### I. THE PROJECT

Tejon Ranch Company and Tejon Ranchcorp (Petitioners) propose a 960 megawatt (MW) natural gas-fired combined cycle power plant (Pastoria Power Project) that is a market-based response to the creation of the California Power Exchange (PX). The proposal would site the power plant in Kern County on the Tejon Ranch property about 25 miles south of the city of Bakersfield. Petitioners anticipate that power produced by the Pastoria Power Project will be sold in the competitive electricity marketplace through the PX and other power marketing outlets, as well as to the California Independent System Operator's (ISO) auctions for ancillary services.

### II. PROCEDURAL HISTORY

On January 25, 1999, Petitioners filed a "Petition for Jurisdictional Determination" requesting that the Commission find the Pastoria Power Project eligible for an exemption from the Notice of Intention (NOI) requirements of Public Resources Code (PRC) section 25502. Petitioners assert that their project conforms with the provisions of Public Resources Code (PRC) section 25540.6(a)(1) which exempts certain power plant projects from the NOI process.

On November 4, 1998, the Commission adopted certain findings in the *Blythe Energy* Decision as precedential for NOI exemption proceedings.<sup>1</sup> In that Decision, the Commission also indicated that

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<sup>1</sup> Docket No. 98-SIT-2; CEC Publication No. P800-98-004.

Petitions for NOI exemptions may be reviewed on the basis of sworn testimony in lieu of evidentiary hearings.

By Notice dated February 2, 1999, the Energy Facility Siting Committee scheduled a hearing on the Petition before the full Commission at its March 17, 1999 Business Meeting. In accord with Commission regulations,<sup>2</sup> the Committee served the Notice and Petition upon the individuals, organizations, and businesses identified by Petitioners as “interested parties,” as well as upon other persons and entities appearing on pertinent mailing lists. The Notice directed all entities wishing to participate in the proceeding to file written statements by February 17, 1999. The Notice also directed Petitioners to provide responses to several inquiries regarding their assertion that the proposed project qualifies for an NOI exemption. Petitioners timely filed their responses as sworn testimony. Commission Staff also filed a statement pursuant to the Notice.

On March 5, 1999, the Committee issued this Proposed Decision which is based on the sworn testimony filed by Petitioners, as well as the statement submitted by Staff. The Proposed Decision was served on Petitioners and all interested parties for review and comment prior to the Commission’s March 17<sup>th</sup> hearing on the matter.

### **III. APPLICABLE LAW**

#### **A. Statutory Requirements.**

Public Resources Code section 25502 provides in pertinent part that:

Each person proposing to construct a thermal powerplant...shall submit to the commission a notice of intention [NOI] to file an application for the certification of the site and related facility or facilities.<sup>3</sup>

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<sup>2</sup> Title 20, Cal. Code of Regs., Section 1232.

<sup>3</sup> The Commission generally has 12 months from the time an NOI filing is accepted in which to conduct this review. (PRC, § 25516.6(a).)

The purpose of the NOI is to provide an open planning process in which the project proponent, interested agencies, and members of the public have an opportunity to review the principal environmental, public health and safety, socioeconomic, and technological advantages and disadvantages of potential sites for a proposed project. (Cal. Code of Regs., tit. 20, § 1721). The NOI process also reviews whether a proposed project conforms with the Commission's assessment of electricity demand adopted pursuant to Section 25305 et seq. of the Public Resources Code. (PRC, § 25502).

Successful completion of the NOI process is a prerequisite to the second stage of power plant licensing, i.e., the Application for Certification (AFC). Public Resources Code section 25540.6, however, *exempts* certain projects from the NOI process and allows them to proceed directly to the AFC stage.<sup>4</sup> Projects eligible for this expedited licensing process include:

...a thermal powerplant which is the result of a competitive solicitation or negotiation for new generation resources and will employ natural gas-fired technology... . (PRC, § 25540.6(a)(1).)<sup>5</sup>

Petitioners contend their proposal fits within this provision.

## **B. Policy Guidance.**

The Commission has authority to interpret pertinent statutory or regulatory provisions. Typically, such Commission policy is expressed in its biennial Electricity Report (*ER*), the most recently adopted of which is controlling for power plant proposals filed during an *ER*'s operative life. (PRC, §§ 25309 and 25523(f)). In the present instance, this guidance appears as part of the 1996 *ER* in which the Commission stated:

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<sup>4</sup> The AFC process anticipates a *final* licensing decision within 12 months of filing an application. See, PRC, § 25540.6(a).

<sup>5</sup> PRC, § 25540.6 lists several specific NOI exemptions that include: cogeneration, solar, modification of a specific facility, site specific, less than 100 MW, and demonstration projects.

For gas-fired power plants which are the result of competitive solicitations or negotiations, we will continue our process [announced in the Addendum to *ER 94*] for granting exemptions from NOI requirements to such projects. (*ER 96*, p. 75, Endnote 1).

The policy expressed in *ER 94* and the Addendum to *ER 94* supported the development of a competitive market in the production and sales of electricity. The Addendum clarified Commission policy on legislation amending Section 25540.6 to allow NOI exemptions for natural gas-fired projects that are “the result of a competitive solicitation or negotiation.” (AB 1884; Statutes of 1993).<sup>6</sup> In the Addendum, the Commission expressed its preference for a “...broad construction of what it means to be ‘the result of a competitive solicitation or negotiation’.”<sup>7</sup> In *ER 96*, the Commission expanded the views contained in *ER 94* and the *ER 94* Addendum to encourage the development of merchant power plants that participate in the newly emerging electricity marketplace without the benefit of ratepayer guarantees. (*ER 96* at pp. 71-72). Until the *Blythe Energy* Decision was issued, formal Commission policy on NOI exemptions was limited to these Electricity Reports.<sup>8</sup>

### **C. Precedential Decision**

In *Blythe Energy*, the Commission further interpreted the scope of its policies pertaining to NOI exemptions, and determined that a natural gas-fired merchant project which proposes to sell its

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<sup>6</sup> The Legislative Counsel's Digest for AB 1884 states that the amendments were intended to change the statute to conform to the present-day competitive marketplace of energy development. “[T]he siting provisions of the Act were written at a time when large baseload power plants were the types of plants being considered by the Commission and when competition between utilities and second party power producers was nonexistent.” (Leg. Counsel's Digest, Bill Analysis for AB 1884, Third Reading, April 12, 1993). At the time AB 1884 was adopted, the federal Public Utilities Regulatory Policy Act (PURPA) and other related state laws had established a process (Biennial Plan Report Update or BRPU) to allow regulated public utilities and independent power producers to compete in the marketplace through a competitive bid process in order to meet demand. (*Ibid.*; 8/27/93 Senate Analysis).

<sup>7</sup> *ER 94* Addendum, Revision 1, p. 2.

<sup>8</sup> See, *Blythe Energy*, pp. 3-6 for a more complete discussion of the NOI exemption policies contained in *ER 94* and *ER 96*.

power in the competitive electricity market, and does not put ratepayers at risk, would generally be eligible for an NOI exemption. The Commission declared the following Findings as *Precedent*:<sup>9</sup>

- 1) The Commission adopted an “Addendum to the 1994 Electricity Report” on February 14, 1996.
- 2) This Addendum sets forth policies and procedures which apply to the interpretation of Public Resources Code (PRC) section 25540.6(a)(1) and are, on a case-by-case basis, specifically applicable to individual Petitions seeking an exemption from the Notice of Intention (NOI) provisions of PRC, § 25502.
- 3) The Commission adopted the 1996 Electricity Report (*ER*) which continued the policies set forth in *ER 94* and in the Addendum.
- 4) The California Power Exchange (PX) was created by AB 1890 to provide an efficient “competitive auction” open to all power producers, resulting in competitive market pricing at no risk to ratepayers. (Pub. Util. Code, § 355).
- 5) The creation of the PX, which promotes a competitive wholesale market, may be viewed as a continuing series of solicitations and negotiations, which are of the type reasonably envisioned by the policy expressed in the Addendum and PRC, § 25540.6(a)(1).
- 6) The PX market, which began the competitive auction on March 31 1998, replaced the solicitation process that existed under the Biennial Report Plan Update (BRPU).

In addition, the Commission found that power sales to the PX are the “result of a competitive solicitation or negotiation for new generation resources” within the meaning of PRC, § 25540.6(a)(1).<sup>10</sup> This finding includes natural gas-fired projects that sell power to other power exchanges and/or wholesale, and/or retail marketers, and/or direct access power markets, and/or other power consumers.<sup>11</sup>

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<sup>9</sup> *Blythe Energy*, pp. 18-19.

<sup>10</sup> Commission Order adopting *Blythe Energy* (Order No. 98-1104-04); see also, *Blythe Energy*, pp. 17-18.

<sup>11</sup> *Ibid.*

#### IV. EVIDENCE OF RECORD

The *Blythe Energy* Decision provides that a Petitioner may establish eligibility for an NOI exemption by filing sworn testimony in response to certain specific inquiries enumerated in that Decision.<sup>12</sup> In consideration of the issues raised in the instant Petition, the Committee directed Petitioners to respond to those inquiries as follows:<sup>13</sup>

1. Describe the specific nexus between the particular project proposed by Petitioner and the PX's solicitations for "day ahead" and "hourly bids". How is the proposed project anticipated to perform under both scenarios regarding its baseload and peaking capacities?
2. Is Petitioner negotiating with any other potential power exchanges or power purchasers, including wholesale and/or retail markets?
3. What is Petitioner's registration status at the PX? If Petitioner has not begun the registration process, what are Petitioner's plans regarding registration and negotiation for a "PX Participation Agreement?"
4. Identify Petitioner's principal corporate owners and/or other entities or individuals who are legally and financially responsible for the development, construction, and operation of the proposed project.
5. Describe Petitioner's experience and assets with regard to power generation acquisition, and power plant development, ownership, and operation; and, if the project proponents do not have such experience, identify the entity or entities that will be responsible for development, construction, and operation of the power plant facility.
6. Describe the specific site location where the project will be constructed, and describe Petitioner's site selection criteria that led to this particular site location; also, include the locations of any other existing or proposed power plant projects that are or will be connected to the Midway Sunset Control Center in the Southern California Edison (SCE) power grid by the summer of 2002.
7. Provide evidence describing the project components sufficiently to establish that the proposed facility is a natural gas-fired power plant.
8. Provide evidence to establish that the proposed project can be developed and operated

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<sup>12</sup> *Id.*, fn. 27 at p. 18.

<sup>13</sup> See, February 2, 1999, Notice of Commission Hearing.

without the benefit of ratepayer support or guarantees.

9. Explain how Petitioner's negotiations may be affected by the Independent System Operator's "congestion" and "ancillary services" market activities.

Petitioners. Petitioners responded to the inquiries in their February 17, 1999, statement to the Committee. The responses were executed under penalty of perjury by Dennis Mullins, Vice President of Tejon Ranchcorp. The Committee reviewed the sworn responses submitted by Petitioners and based its Findings and Conclusions upon that submittal, in lieu of an evidentiary hearing.

Staff. Staff agreed with Petitioners' assertions that the proposed merchant project is a natural gas-fired power plant that would meet the statutory test for being the result of a competitive solicitation. (Staff Statement filed February 17, 1999). Staff expressed its belief that existing Commission policy and previous NOI exemption cases support such a conclusion.<sup>14</sup> (*Ibid.*)

There were no other comments or other evidence filed in this matter.

## **V. FINDINGS and CONCLUSIONS**

Based upon the precedent established in *Blythe Energy*, and in the absence of any contravening evidence, the Committee finds that the proposed Pastoria Power Project conforms with the Commission's interpretation of PRC, § 25540.6(a)(1).

Based on the totality of the record, we make the following findings and conclusions:

- 1) Tejon Ranch Company and Tejon Ranchcorp (Petitioners) filed a Petition seeking an exemption from the Notice of Intention (NOI) process in accord with the policy guidance set forth in the *ER 94* Addendum, *ER 96*, and the *Blythe Energy* Decision, and in compliance with the requirements of Title 20, California Code of Regulations, sections 1230, et seq.

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<sup>14</sup> Staff cites the Commission's Decisions in *Blythe Energy*, *supra*, and in *La Paloma* (98-SIT-1; CEC Publication No. P800-98-003) and cases cited therein.

- 2) Petitioners propose a natural gas-fired combined cycle power plant, nominally rated at 960 MW (Pastoria Power Project). The major equipment described for the project is typical of natural gas-fired power plants, including four combustion turbine generators (CTGs) fueled by natural gas; one or more steam turbine generators; four heat recovery steam generators (HRSGs); duct burners fueled by natural gas; and auxiliary equipment.
- 3) Tejon Ranch Company and Tejon Ranchcorp are engaged in a joint venture to provide the site for and market the proposed Pastoria Power Project, LLC. Tejon Ranchcorp, a California corporation, is a wholly owned subsidiary of Tejon Ranch Company, a publicly traded Delaware corporation engaged in real estate and agribusiness. Its foremost asset is the Tejon Ranch, consisting of 270,000 acres located in Kern County about 60 miles north of Los Angeles and about 30 miles south of the City of Bakersfield. The operating revenues for Tejon Ranch Company in 1998 were \$41 million. Tejon Ranch Company is not engaged in the electric power industry and “does not intend ultimately to be the principal developer or operator of the project.” (Exhibit 3, *Responses to Committee Inquiries*, at p. 3). Petitioners have relied on financial advisers and engineering and environmental consultants, such as WZI, Inc., who have experience in the design, permitting, and construction of power generation facilities.
- 4) The proposed site for the Pastoria Power Project is on the Tejon Ranch property in Kern County, approximately 25 miles south of the city of Bakersfield. The site is on the north side of the Edmonston Pump Plant Road, approximately 6.5 miles east of the Grapevine Interchange on Interstate Highway 5.
- 5) Petitioners chose the site based on compatibility with existing and proposed uses of surrounding land; proximity to existing electric transmission facilities which include Southern California Edison’s (SCE) 230 kV line at the Pastoria substation which feeds into the Midway Sunset Control Center (MSCC)<sup>15</sup> via Pacific Gas and Electric’s (PG&E) transmission facilities; proximity to the Kern-Mojave natural gas pipeline; and other existing infrastructure, such as road access and water resources.
- 6) The proposed project is a market-based response to the deregulation of California’s electricity industry. Petitioners expect that power produced by the project will be sold through the California Power Exchange (PX), and through bilateral sales in other wholesale and retail power-marketing outlets. Petitioners are negotiating with experienced power plant developers to develop, finance, construct, and operate the project. Marketing the project’s capacity and output will be the responsibility of the prospective project developer and owner.

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<sup>15</sup> The Pastoria substation is located between the Magunden and Bailey substations. The output from the proposed new Elk Hills, La Paloma, and Sunrise power plants would flow to the MSCC through the Magunden substation. Output from the proposed new Antelope Valley, Midway Sunset expansion, High Desert, and Blythe projects would also flow to MSCC through SCE’s Vincent substation via the Bailey and Pardee substations.



- 7) The Pastoria Power Project is designed as a baseload facility to provide operating flexibility in response to the PX's "day ahead" and "hour ahead" bidding processes. The proposed project's design will include load following capability to provide operating flexibility to enable the plant to respond to price signals for quick startups and ramping up to a baseload output and turning down to minimum load. The project may also provide peaking energy in excess of its baseload capacity.
- 8) Petitioners anticipate that the proposed project will participate in the Independent System Operator's (ISO) competitive bidding processes for acquisition of ancillary services. The project will tie into the ISO transmission grid at the existing Pastoria substation owned by SCE. High efficiency, low-cost generating facilities like the Pastoria Power Project are less likely to be affected by transmission congestion than existing less efficient generators.
- 9) The Pastoria Power Project is a merchant project that is not eligible for ratepayer support mechanisms. The proposed project will be financed, built, and operated with private funds that the owners will provide entirely at their own risk.
- 10) Petitioners are not registered with the PX, but they anticipate that the prospective developers/marketers will be registered or will be affiliated with registered participants .

Since the proposed Pastoria Power Project is a speculative endeavor, it could be subject to substantial modification after a new owner/developer takes responsibility for the project. If the owner/developer of the Pastoria Power Project intends to make substantial changes to the project as described in this Petition before filing an AFC, it may be necessary for the owner/developer to reapply for an NOI exemption. Petitioners are directed to submit the identity of any new project owner or developer to Commission staff at least 10 days prior to the filing of an AFC for the Pastoria Power Project.

With the conditions stated in the previous paragraph, we conclude that Petitioners' proposal for a natural gas-fired power plant project is the "result of a competitive solicitation or negotiation" for the sale of its electric power. Under these circumstances, and in light of the sworn testimony

submitted by Petitioners and discussed in this Decision, and based on the precedent established in

the *Blythe Energy* Decision, the Pastoria Power Project as described in the Petition and the record herein, qualifies for an exemption from the Notice of Intention as set forth in Public Resources Code section 25540.6(a)(1).

Dated: \_\_\_\_\_

ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

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ROBERT A. LAURIE  
Commissioner and Presiding Member  
Energy Facility Siting Committee

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DAVID A. ROHY, Ph.D.  
Vice Chair and Associate Member  
Energy Facility Siting Committee

**APPENDIX A**

**EVIDENCE OF RECORD**

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

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<b>Pastoria Power Project, LLC</b>	)	<b>COMMITTEE PROPOSED DECISION</b>
<b>[Tejon Ranch Company and</b>	)	<b>RE: NOI EXEMPTION</b>
<b>Tejon Ranchcorp]</b>	)	
<b>Petition for Jurisdictional Determination</b>	)	
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**EVIDENCE OF RECORD**

<u>Exhibit</u>	<u>Date</u>	<u>Document</u>
1	January 25, 1999	Petition for Jurisdictional Determination filed by Tejon Ranch Company and Tejon Ranchcorp (Pastoria Power Project)
2	February 17, 1999	Energy Commission Staff Statement filed by Energy Commission Staff
3	February 17, 1999	Responses to Energy Facility Siting Committee's Inquiries 1 through 12, filed by Tejon Ranch Company and Tejon Ranchcorp

## **APPENDIX B**

### **PROOF OF SERVICE LIST**